

LAW OFFICES

JENNER & BLOCK

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

601 THIRTEENTH STREET, N.W.
SUITE 1200
WASHINGTON, D.C. 20005

(202) 639-6000

(202) 639-6066 FAX

CHICAGO OFFICE
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611
(312) 222-9350
(312) 527-0484 FAX

LAKE FOREST OFFICE
ONE WESTMINSTER PLACE
LAKE FOREST, IL 60045
(847) 295-9200
(847) 295-7810 FAX

DOCKET FILE COPY ORIGINAL

MARK D. SCHNEIDER

WRITER'S DIRECT DIAL: 202-639-6005
WRITER'S DIRECT FAX: 202-639-6066
INTERNET ADDRESS: mschneider@jenner.com

REDACTED – FOR PUBLIC INSPECTION

November 8, 1999

NOV - 8 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B-204
Washington, D.C. 20554

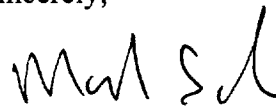
Re: Application of Bell Atlantic Pursuant to Section 271 of the
Telecommunications Act of 1996 to Provide In-region, InterLATA Services in
New York, CC Docket No. 99-295

Dear Ms. Salas:

Enclosed herewith are the reply comments of MCI WorldCom, Inc. on the above-captioned 271 application of Bell Atlantic-New York.

Pursuant to this Commission's order, MCI WorldCom is filing a confidential portion of its submission and a redacted version of its entire submission. Inquiries regarding access to the confidential information by other participants in this proceeding (subject to the terms of the applicable protective order) should be addressed to: Elena Broder-Feldman, Jenner & Block, 601 13th Street, NW, Suite 1200, Washington, D.C. 20005, (202) 637-6310.

Sincerely,



Mark D. Schneider

Enclosure

1-00
047
No. of Copies rec'd
List ABCDE

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Application by New York Telephone)
Company (d/b/a Bell Atlantic -)
New York), Bell Atlantic)
Communications, Inc., NYNEX Long)
Distance Company, and Bell Atlantic)
Global Networks, Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in New York)

Docket No. 99-295

RECEIVED
NOV - 8 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF MCI WORLDCOM, INC., ON THE APPLICATION
BY BELL ATLANTIC-NEW YORK FOR AUTHORIZATION TO
PROVIDE IN-REGION, INTERLATA SERVICES IN NEW YORK**

Mark D. Schneider
Nory Miller
Paul W. Cobb, Jr.
Jon M. Shepard
Elena N. Broder-Feldman
Jeffrey I. Ryen
JENNER & BLOCK
601 13th Street, N.W., Suite 1200
Washington, D.C. 20005

(202) 639-6000

Anthony C. Epstein
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

(202) 429-8065

Mary L. Brown
Keith L. Seat
Karen T. Reidy
MCI WORLDCOM, INC.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

(202) 887-2993

November 8, 1999

APPENDIX TABLE OF CONTENTS

Declarations

TAB	DESCRIPTION	
	DECLARANT	SUBJECT
A	John G. Donoghue	Competitive Requirements
B	Sherry Lichtenberg and John Sivori	Operations Support Systems

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	1
BA-NY NEEDS TO TAKE ADDITIONAL STEPS BEFORE NEW YORK LOCAL MARKETS ARE IRREVERSIBLY OPEN TO COMPETITION	2
A. BA-NY Has Not Yet Provided Adequate Order Processing.	4
B. BA-NY Should Follow Appropriate Change Management Practices.	11
C. BA-NY Needs To Improve Its Pre-Order Interface.	17
D. BA-NY Does Not Yet Provide Advanced Services Loops.	21
E. BA-NY's Performance Remedies Are Not Adequate.	25
CONCLUSION	31

INTRODUCTION AND SUMMARY

The comments submitted in response to Bell Atlantic-New York's ("BA-NY's") section 271 application show both how far BA-NY has come, and how important are the few remaining steps BA-NY needs to take before the local markets in New York are irreversibly open to competition. MCI WORLDCOM, Inc. ("MCI WorldCom") continues to press BA-NY to fix the problems that prevent MCI WorldCom from becoming a sustainable competitive presence for local service in New York. As discussed in its opening comments, five problems continue to impose significant entry barriers to competition. MCI WorldCom needs:

- Adequate flow-through order processing.
- A working change management process.
- A robust pre-order interface.
- Access to DSL-capable loops.
- The assurance of a performance remedy plan that makes it possible to depend on the continued functioning of these systems and processes after BA-NY gains interLATA entry.

In the weeks since MCI WorldCom filed its opening comments, it has continued to expand its presence in the New York local market,^{1/} and there has been progress on some of these open matters. But none has been successfully resolved. MCI WorldCom agrees with the U.S. Department of Justice ("DOJ") that these issues can be solved in a short time. See Evaluation of the U.S. Department of Justice, Bell Atlantic-New York at 2 (Nov. 1, 1999) ("DOJ Eval."). But MCI WorldCom also shares DOJ's view that while the "remaining problems are few in number,

^{1/} See Supplemental Declaration of John G. Donoghue, appended at Tab A to these Reply Comments, ¶¶ 6-8.

. . . they will impose a significant constraint on competition if they are not adequately resolved.”

Id. Until they are resolved, BA-NY will not have “fully implemented the competitive checklist” (§ 271(d)(3)(A)(i)), and granting its request for authorization to provide interLATA service would not be consistent with the public interest. Id. § 271(d)(3)(C). In sum, BA-NY has not yet demonstrated that its application should be granted.

**BA-NY NEEDS TO TAKE ADDITIONAL STEPS BEFORE NEW YORK
LOCAL MARKETS ARE IRREVERSIBLY OPEN TO COMPETITION**

BA-NY filed this application prematurely. Before its application is granted, BA-NY must demonstrate that it has resolved each of the problems discussed in MCI WorldCom’s comments, problems which for the most part also have been identified by DOJ, the New York State Public Service Commission (“NYPSC”), and the New York State Attorney General (“NY AG”), as well as by other CLECs. As MCI WorldCom stressed in its initial comments, paper promises that BA-NY will solve these problems some time in the future -- even in the near future -- are inadequate. MCI WorldCom Comments at 7. See also LA II Order ¶¶ 51-59^{2/}; DOJ SC Eval. at 16 & n.28.^{3/} Section 271 is a “show me” provision. The systems and processes that are needed to make local competition work are new and often complex, and even the most sincerely made

2/ In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998) (hereinafter “LA II Order”).

3/ Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208 (filed Nov. 4, 1997) (hereinafter “DOJ SC Eval.”).

promise to correct a problem by a certain date may not be realized. Moreover, a Bell Operating Company ("BOC") has no natural incentive to facilitate local competition. In section 271 Congress created a regulatory incentive; but that incentive system will not work if in-region interLATA entry precedes the completion of the market-opening steps set out in the statute.^{4/}

Consistent with the Commission's rules, evidence that the necessary improvements have been made must be on the record in sufficient time to allow all parties to comment upon it, and to allow the Commission to consider those comments.^{5/} The Commission should grant an application only after the completion of such a process. MCI WorldCom shares DOJ's view that in light of the limited nature of the remaining problems, any new BA-NY submission would have to address only a few open issues, and could be resolved on an expedited basis. DOJ Eval. at 42.

The Commission does not have the authority, however, to approve an application conditioned upon later satisfaction of the competitive checklist. The Act expressly states that "the Commission shall not approve" the application "unless it finds that . . . the petitioning Bell operating company . . . has fully implemented the competitive checklist." 47 U.S.C.

§ 271(d)(3)(A)(i). Sometimes grammar matters: here it plainly indicates sequence. Congress

^{4/} For these reasons, the NYPSC misconstrues the federal law when it concludes that paper promises, coupled with the sanctions provided by a performance remedy plan, are adequate to satisfy the requirements of section 271. See, e.g., NYPSC Eval. at 57 (documented change management problems not a bar to entry because of paper commitments to resolve problems coupled with "Bell Atlantic-NY's agreement to have the foregoing commitments enforced through the Change Control Assurance Plan").

^{5/} See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, DA-99-1994, Public Notice (Sept. 28, 1999).

required that the BOC complete its full implementation of the checklist before the FCC can approve the requested authorization.

Even apart from the illegality of conditional satisfaction of the checklist, allowing BA-NY to compete for long-distance customers before it fully implements the requirements of the checklist would be profoundly bad policy. Similar conditions that have been imposed in the merger context have turned out to be difficult, if not impossible, to enforce effectively, and after-the-fact enforcement proceedings can be expected, at best, to consume substantial Commission resources and cannot ensure timely compliance. At worst, they could be tantamount to permitting BA-NY to forgo altogether the requirements the conditions are designed to satisfy.

In what follows, MCI WorldCom addresses the status of the issues raised in its initial submission, and analyzes related evidence and legal arguments submitted by other commenters on these matters.

A. BA-NY Has Not Yet Provided Adequate Order Processing.

BA-NY's Ordering OSS Requires Too Much Manual Processing. The current data continue to show that BA-NY relies upon too much manual processing of orders to permit sustainable competition in New York. BA-NY has promised to fix this problem, but it is not fixed yet. In order to support sustained competitive entry in local markets, BA-NY must provide CLEC customers' orders and its own retail customers' orders with an "equivalent level of mechanized processing."^{6/} Providing flow-through processing for the vast majority of orders is

^{6/} In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South

important because BA-NY's processes must be scalable to handle not only today's limited volumes but tomorrow's increased commercial volumes as well. See e.g., LA II Order ¶¶ 109, 116.

In addition, to compete adequately CLECs need the efficiencies that only flow-through processing can afford. As competition continues to develop and BA-NY intensifies its efforts to retain customers and win back those it has lost, MCI WorldCom and other CLECs will have to complete orders and provision service within two days of receiving an order, as quickly as BA-NY -- not in the longer five-day intervals MCI WorldCom allows BA-NY today.^{7/} Such speed is not possible if CLECs must wait 24 hours for manual firm order commitments ("FOCs") and rejects (as opposed to two hours for flow-through FOCs and rejects). Lichtenberg & Sivori Supp. Decl. ¶ 14. BA-NY's excessive reliance on manual processing is a significant barrier to competition.

In its initial comments, MCI WorldCom demonstrated that BA-NY's flow-through rates for MCI WorldCom's basic residential POTS orders were inadequate. MCI WorldCom

Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, 13 F.C.C.R. 539, ¶ 105 (1997).

^{7/} See Supplemental Joint Declaration of Sherry Lichtenberg and John Sivori, appended to these reply comments at Tab B ("Lichtenberg & Sivori Supp. Decl."), ¶ 14. Customers ordering new lines of course need speedy service because every hour service is delayed is an hour they are without phone service at all. Customers migrating from BA-NY to MCI WorldCom often are eager to make the change in order to benefit from new features and superior prices and service they have selected. If MCI WorldCom cannot provide the new service quickly, customers become frustrated and understandably blame MCI WorldCom for the delay. Id. ¶ 14 n.4.

Comments at 10-11.^{8/} MCI WorldCom also showed that, as result of the poor flow-through performance, BA-NY was having difficulty processing manual FOCs and rejects on time. Id. at 17-18 & nn.21-23 (noting that BA-NY failed to satisfy the timing standards set out in the Carrier-to-Carrier Guidelines for manual FOCs and rejects for May, June, July, and August). MCI WorldCom also demonstrated that BA-NY was primarily responsible for the lack of flow-through. All available evidence indicates that BA-NY error and BA-NY system design account for approximately 70% of the orders falling to manual processing.^{9/}

In September, BA-NY processed ****REDACTED**** of MCI WorldCom's UNE-platform orders on a flow-through basis, and again failed to meet the required standard for processing manual FOCs and reject notices. Lichtenberg & Sivori Supp. Decl. ¶ 16. Because BA-NY's first set of enhancements designed to improve flow-through were not implemented until October 30, they are not reflected in the September data. Instead, September's modest improvement is either the result of decreases in the number of BA-NY and MCI WorldCom errors, or of a difference in the composition of the orders sent in September. In any event, BA-NY is still dropping far too many of MCI WorldCom's orders to manual processing. If BA-NY is going to support MCI

^{8/} For May, June, July, and August, BA-NY only flowed through ****REDACTED****, ****REDACTED****, ****REDACTED****, and ****REDACTED**** of MCI WorldCom's UNE-platform orders, respectively. MCI WorldCom Comments at 10-11.

^{9/} Id. at 11-13. BA-NY's analysis showed that 65.63%, 71.34%, and ****REDACTED**** of the orders were dropped due to BA-NY error and BA-NY system design. Joint Declaration of Sherry Lichtenberg and John Sivori, appendix to MCI WorldCom's opening Comments, Tab A, ("Lichtenberg & Sivori Initial Decl."), ¶ 105. NYPSC Staff also found that ****REDACTED**** of the dropped orders were caused by BA-NY error and system design. Id. ¶ 105 n.13.

WorldCom's launch into the local markets, BA-NY must increase its flow-through rates at least to 90% -- as it has promised to do. Id.

Other commenters also express concern with the high degree of manual processing required by BA-NY. The Attorney General of New York, for example, concludes that "the latest data currently available, indicates that BA-NY falls far short of processing such orders in a way that would enable a CLEC employing UNEs to compete effectively with BA-NY." NY AG Comments at 12-13.

AT&T rightly points out that BA-NY's poor flow-through rates are in fact even worse than they appear to be. The flow-through rates reported by BA-NY do not include rejected orders. They only indicate the percentage of orders processed on a flow-through basis that are accepted for processing and not rejected.^{10/} In order, therefore, to determine BA-NY's overall order processing capability, its rejection and flow-through rates must be combined. As AT&T notes, in August BA-NY only managed to process 39% of CLEC UNE orders without rejection or manual intervention. Crafton & Connolly Aff., appendix to AT&T Comments, ¶¶ 43 n.19, 107. And BA-NY showed little improvement in September, when it registered a combined reject/flow-through rate of only 43%. AT&T correctly concludes that such "high levels of manual processing are simply incompatible with high-volume competition." AT&T Comments at 19.

^{10/} BA-NY Compliance Filing, New York State Carrier-to-Carrier Guidelines Performance Standards and Reports, Case No. 97-C-0139, OR-5 Percent Flow-Through, at 27 (NYPSC July 12, 1999) (limiting metric to the percent of "valid" orders received and processed without manual intervention).

DOJ also finds BA-NY's high rejection rate and poor flow-through percentages "disturbing." DOJ Eval. at 2; see also id. at 27-32.^{11/} DOJ understands that sustained competition in the residential and small business markets will require BA-NY to decrease rejects and increase flow-through. DOJ notes not only that the direct costs of supporting manual processing may impede competition, but also that "heavy reliance on manual processes inevitably generates mistakes and delays in processing orders, which may seriously affect service quality." Id. at 29. Moreover, DOJ rightly states that "[c]ustomers may be wary of switching to CLECs if there is considerable uncertainty about the quality of service they offer." Id.

The NYPSC too acknowledged that in order "[t]o handle high volumes of orders, it is important that orders flow through without manual handling." NYPSC Eval. at 45. It concluded that "Bell Atlantic's current UNE flow-through rate of approximately 60% has suffered by reason of several factors," including primarily BA-NY error and system design. Id. at 45-46 (footnote omitted). The NYPSC's conclusion that BA-NY's flow-through rates nonetheless satisfy the legal requirements of section 271 relies on BA-NY's commitment to take "several steps that should significantly improve flow-through rates." Id. at 46.^{12/} As indicated above, BA-NY has

^{11/} DOJ agrees with AT&T that BA-NY's order processing measure "understates the amount of manual processing that actually takes place in Bell Atlantic's ordering centers because it reports the flow-through rate for orders that are provisioned but does not include rejected orders that are not provisioned or orders that are canceled before being provisioned." DOJ Eval. at 31 n.81.

^{12/} The NYPSC observes that KPMG flow-through testing results found that adequate percentages of orders that "should have flowed through did in fact flow-through." NYPSC Eval. at 45. As MCI WorldCom explained in its initial comments, however, BA-NY's problem is that insufficient numbers of orders are designed to flow through. This is not a problem that the

agreed to implement system-design changes over the course of the next six to eight months that, if successful, “should increase the overall flow-through rate from 60% in August to approximately 80% by the end of 1999 and close to 90% by the second quarter 2000.” Id. at 47. It has also agreed to workshops to help reduce CLEC errors. Id.

These are indeed important and welcome commitments. But they prove only that BA-NY filed too soon. The governing legal standard does not permit this application to be granted on the basis of a paper promise to satisfy such an important competitive requirement in the future.^{13/}

BA-NY Is Failing To Process MCI WorldCom’s Orders in a Timely Manner.

Unfortunately, inadequate flow-through is not the only major problem MCI WorldCom is having with BA-NY’s ordering OSS. Since filing its initial comments, MCI WorldCom has discovered that thousands of its UNE-platform orders, some dating as far back as August, have not received firm order confirmations (“FOCs”) and notices of completion (“NOCs”) from BA-NY. This could have serious consequences for MCI WorldCom’s local business. See Lichtenberg & Sivori Supp. Decl. ¶ 18.

KPMG tests were designed to identify. MCI WorldCom Comments at 15. See also DOJ Eval. at 5 & n.6 (stating that “KPMG’s test could not exactly replicate commercial use of Bell Atlantic’s systems” and noting that KPMG’s test orders flowed through Bell Atlantic’s systems at much higher rates than CLECs are finding today).

In addition, the NYPSC takes the position that BA-NY’s difficulties processing manual FOCs and reject notices are not significant because “the vast majority” of CLEC orders are flow-through. NYPSC Eval. at 42. This is not so. As the NYPSC itself recognizes, BA-NY is today processing approximately 40% of CLEC status notices manually. See id. at 42-43 (noting that BA-NY has only a 60% flow-through rate for FOCs and a 55% rate for reject notices).

^{13/} See supra pp. 2-4.

Without firm order confirmations, MCI WorldCom cannot confirm the scheduled due dates for service to its customers or keep customers informed as to the status of their orders. Without final notices of completion, MCI WorldCom cannot begin billing its customers or provide customers with adequate service and support. MCI WorldCom cannot help its customers when they have trouble with their service or with their bills. In addition, customers who believe they have switched their service to MCI WorldCom may not pay their BA-NY bills and could as a result lose service altogether.

As of November 4th, even after BA-NY had spent several weeks trying to address this problem, MCI WorldCom still had not received firm order commitments for 28 of its August orders, 374 of its September orders, and 741 of its October orders. Lichtenberg & Sivori Supp. Decl. ¶ 19. The situation with NOCs is even worse. MCI WorldCom has not received NOCs for 423 of its August orders, 3466 of its September orders, and 5932 of its October orders. Id.^{14/}

This is the second time this year that MCI WorldCom has experienced a serious backlog. When the problem first arose in June, BA-NY addressed the backlog but refused to tell MCI WorldCom the causes of the problem. It merely assured MCI WorldCom that the problem was

^{14/} While the causes for the backlogged orders are not definitely known, it is clear that part of the problem lies in the fact that many CLEC orders are dropping to manual processing after service has been provisioned but before they have cleared BA-NY's billing systems. MCI WorldCom has learned, for example, that BA-NY drops local service orders to manual processing if there is a pending change order for that customer's long distance service (a "PIC/LPIC" change). Manual processing in these circumstances is unnecessary because there should be no conflict between the local service order and the PIC/LPIC change order. This is an example of another system design error within BA-NY's OSS. See Lichtenberg & Sivori Supp. Decl. ¶ 21.

fixed and that it had taken steps to ensure that orders would not be lost in the future.^{15/}

Lichtenberg & Sivori Supp. Decl. ¶ 23. Evidently, BA-NY did not fix the problem. MCI WorldCom again is urging that BA-NY provide timely firm order completions and notices of completions for its customers and work with MCI WorldCom to resolve the problems with its ordering systems. BA-NY has not yet responded to MCI WorldCom's request. Id. This problem must be solved permanently if MCI WorldCom is to remain a competitive presence in New York.

B. BA-NY Should Follow Appropriate Change Management Practices.

BA-NY still has not shown that it can adhere to reasonable change management practices for changes to its OSS interfaces and systems. In its initial comments, MCI WorldCom identified several key deficiencies in BA-NY's change management practices. First, BA-NY has not demonstrated that it can provide timely notice and documentation of changes. MCI WorldCom Comments at 20-21. Second, BA-NY has not shown a willingness to give CLECs any meaningful input on changes or on the timing of new releases. Id. at 21-22. Third, BA-NY does not provide timely notice of emergency outages or adequate help desk support. Id. at 22-24. Finally, BA-NY has not demonstrated in testing or through actual commercial usage that its new

^{15/} KPMG too identified this problem through its testing, and like MCI WorldCom it was told by BA-NY that the problem had been resolved. Lichtenberg & Sivori Supp. Decl. ¶ 23 n.8.

quality assurance testing environment and procedures are adequate to assure the smooth transition to new software. Id. at 24-25.^{16/}

DOJ also finds the deficiencies in BA-NY's change management performance to be cause for concern. It notes that "Bell Atlantic's EDI documentation has been so unstable that it has impaired CLEC ability to develop these interfaces and that Bell Atlantic has not yet demonstrated, through its change control performance reports, that it is able to provide CLECs with relatively stable and predictable documentation." DOJ Eval. at 34 (footnotes omitted). DOJ points out that BA-NY has committed to improving change management and that new metrics have been developed to track BA-NY's progress, but there is no performance data to date showing that BA-NY is actually delivering adequate change control. Id. at 36. The metrics for software validation (PO-6-01) and timely resolution of software problems (PO-7-01, PO-7-02, PO-7-04) are still under development. Moreover, the data that are available demonstrate that BA-NY's performance has actually worsened: The metric measuring the percentage of notices for emergency maintenance changes sent on time (PO-4-01) dropped from 70% in August to 58% in September.

^{16/} AT&T's experience confirms these problems with BA-NY's change management practices. As AT&T explains, "Bell Atlantic has consistently abused the change control process," making unilateral changes and failing to provide adequate interface documentation. AT&T Comments at 28. AT&T has also had difficulties with BA-NY's help desk, reporting that "their non-responsiveness and incapacity to assist CLECs in resolving rejected or problem orders or trouble tickets . . . has led to substantial backlogs and repeated delays." Id. at 29 (citing Crafton & Connolly Aff. ¶¶ 243-247).

DOJ also recognizes the critical importance of having adequate quality assurance testing facilities and procedures in place for CLECs, and that the failure to provide such facilities and processes has a significant impact on CLECs' ability to compete at commercial volumes. DOJ notes that "KPMG found Bell Atlantic's software testing environment seriously deficient" and correctly states that "this finding raises the concern that competitors will be unable to develop and maintain the computer connections necessary to order high volumes of UNE-platform from Bell Atlantic." DOJ Eval. at 35. DOJ notes that BA-NY has developed a new testing environment but that there is no evidence yet that the new environment will prove adequate. Id. at 35-36.^{17/}

Since filing its comments on October 19, MCI WorldCom has continued to experience change management problems. First, BA-NY's help desk service continues to be grossly inadequate. Lichtenberg & Sivori Supp. Decl. ¶ 32. Because of the persistent outages of the EDI interface for pre-ordering, see discussion infra at 20, this problem is having serious competitive consequences. MCI WorldCom has found that BA-NY's help desk attendants often are not knowledgeable enough to understand, much less resolve, the reported problems; and MCI WorldCom personnel have often been put on hold for up to 45 minutes on calls to the help desk.

^{17/} The NYPSC confirms BA-NY's long history of change management problems and acknowledges that BA-NY has not shown, either in actual commercial usage or testing, that it can deliver timely notice and documentation under the established change control procedures. NYPSC Eval. at 55-63. But, the NYPSC again asserts that BA-NY's paper promises of a new and improved testing environment, and a new performance remedy system, are sufficient to satisfy its legal obligations. Id. at 57, 62. Section 271, as interpreted by this Commission, does not permit the application to be granted on this basis. See supra pp. 2-4.

Even when help desk personnel promise to call back MCI WorldCom service representatives with information about outages, all too frequently they do not call back at all. Id. ¶¶ 33-35. Additionally, BA-NY consistently fails to follow its own rules and page MCI WorldCom representatives to alert them of system outages. Id. ¶ 24.

Moreover, BA-NY is still failing to follow up on trouble tickets and to provide an explanation to MCI WorldCom for the root cause of a problem after a particular customer's complaint has been resolved. Id. ¶ 34. As MCI WorldCom explained in its initial filing, without such explanation, MCI WorldCom cannot take steps necessary to ensure that its personnel do not contribute to future recurrences of these problems, or make recommendations for changes to ensure that the problems do not resurface. Lichtenberg & Sivori Initial Decl. ¶ 140. The fact that BA-NY is again failing to process thousands of MCI WorldCom orders after refusing to share with MCI WorldCom the root cause of this problem when it emerged earlier this year demonstrates the importance of providing detailed follow-up explanations for alleged fixes. If MCI WorldCom had known in June, for example, that BA-NY was dropping local service orders to manual processing simply because there were long distance change orders pending, see supra at 10 n.14, MCI WorldCom would have insisted that the practice be stopped, and this issue would not have resurfaced today. Lichtenberg & Sivori Supp. Decl. ¶ 34.

Unfortunately, BA-NY has yet to provide explanations for most of the problems MCI WorldCom has experienced with its EDI interface for pre-ordering. Id. ¶ 35. BA-NY must improve its help desk service if it is not going to choke sustained competition in New York.

Finally, despite its assurances to the contrary, BA-NY continues to struggle with interface management. BA-NY continues to shut CLECs -- the ultimate users of these systems and interfaces -- out of the change management process, and consistently fails to conduct sufficient testing of new interfaces before releasing them to the CLECs. The latest example of BA-NY's poor release management is its roll out of the new version of its Graphical User Interface ("GUI"), called "GUI III."

Designed for use primarily by smaller CLECs, the GUI currently is the only mode of access to BA-NY's pre-ordering, ordering, and repair and maintenance functions for the vast majority of CLECs. Although MCI WorldCom is working to implement application-to-application interfaces (e.g., EDI for pre-ordering and ordering, and an Electronic Bonding interface for repair and maintenance), MCI WorldCom still must use the GUI for key pre-ordering transactions,^{18/} for repair and maintenance, and, to a limited extent, for ordering.^{19/}

Recently, BA-NY unilaterally decided to move CLECs from the GUI II to the GUI III, which purportedly provides enhanced access to its OSS. Lichtenberg & Sivori Supp. Decl. ¶ 26. MCI WorldCom began limited testing of the GUI III in September, and by October 25 MCI WorldCom personnel had completed training and began using the new interface. *Id.* ¶ 28. Along

^{18/} MCI WorldCom uses the GUI pre-ordering functions only for telephone number selection and reservation. MCI WorldCom is reserving approximately ****REDACTED**** numbers per week through the GUI. Lichtenberg & Sivori Supp. Decl. ¶ 26 n.9.

^{19/} MCI WorldCom uses the GUI to resend "escalated" orders, which are orders for customers whose service was not turned up on their requested due date. MCI WorldCom processes anywhere from ****REDACTED**** to ****REDACTED**** such orders each week. Lichtenberg & Sivori Supp. Decl. ¶ 26 n.10.

with other CLECs, however, MCI WorldCom has experienced serious difficulties with the new GUI.

To begin with, MCI WorldCom representatives have had significant problems logging on to the GUI III, sometimes having to attempt to log on four or five times before succeeding in entering BA-NY's system. Id. ¶ 29. Once in the system, representatives have encountered extremely long delays in the GUI's response times. Id. The interface has also proven unreliable. In order to achieve quicker response times and to avoid having to use BA-NY's secure identification cards, in October MCI WorldCom accepted BA-NY's suggestion that it switch from BA-NY's Telnet access to the GUI to direct internet access. That move has proved disastrous. Eight times from October 11 through November 1, BA-NY announced that its internet access was unavailable. And, even when the interface has been accessible, MCI WorldCom has experienced frequent GUI outages, with a total of seven outages in the short period since October 28. Id. ¶ 29.

MCI WorldCom is also concerned with the functionality of the GUI III. Unlike the GUI II, the GUI III permits only the sales representative who created an order to edit it, and only permits the customer service representative who opened a trouble ticket to check the status of that ticket. Id. ¶ 30. This is unworkable because when a customer calls in to change his order or check on the status of his trouble ticket, he is not likely to get the same MCI WorldCom representative that he dealt with originally. In order to provide adequate service to customers, our representatives must have access to any customer's order or trouble ticket, not just those for which the particular representative is personally responsible. Id.

As a result of these problems, MCI WorldCom and other CLECs have asked BA-NY to postpone decommissioning the GUI II for at least 90 days so that these problems can be addressed and the interface can be adequately tested. This issue is not yet resolved,^{20/} but clearly shows that BA-NY does not provide adequate change management. It persists in rushing inadequately tested releases into production and leaving CLECs to discover the many problems with the interfaces during their testing or in production. This is unacceptable.

C. BA-NY Needs To Improve Its Pre-Order Interface.

Slow Parsed CSR Response Times. MCI WorldCom continues to have serious problems with the one pre-order subfunction with which it has experience using an application-to-application connection -- the parsed customer service record ("CSR"). A "parsed" CSR is a CSR in which the pre-order customer information is received separated into fields which then can automatically populate an order form which is subsequently submitted to BA-NY. When an MCI WorldCom customer service representative receives a parsed CSR, she does not have to retype the customer's name, address and directory listing information into the order. Parsing therefore eliminates typographical errors -- the principal cause of the so-called "CLEC error" that has contributed to the high percentage of orders which do not flow through BA-NY's ordering system automatically. Parsed CSRs, in sum, are necessary to integrate BA-NY's pre-order and

^{20/} BA-NY has agreed to correct these problems, and agreed to a two week delay in shutting down the GUI II, but it has not adopted a process to keep these problems from recurring. Lichtenberg & Sivori Supp. Decl. ¶ 31.

order OSS systems. That is why it was the first pre-order subfunction developed by MCI WorldCom. Lichtenberg & Sivori Supp. Decl. ¶ 6.

MCI WorldCom needs to be able to use the parsed CSR subfunction if it is to process commercially significant quantities of platform orders, but can do so only if it receives parsed CSRs from BA-NY quickly. After obtaining the necessary consent, MCI WorldCom customer service representatives “pull” CSRs while they are on the telephone with potential new customers during the initial sales call, and they need the information contained in the CSRs to understand the kind of service the customers currently are receiving, as well as to submit the customers’ orders, should they choose to switch to MCI WorldCom. Id. ¶ 7.

BA-NY’s own customer service representatives can pull up a CSR almost instantaneously. MCI WorldCom needs at least response times no longer than 10 seconds, especially during peak selling hours in the evenings.^{21/} Lichtenberg & Sivori Supp. Decl. ¶ 8. It is difficult enough for a representative to keep the customer on the line for 30 seconds while the CSR is being pulled -- 10 seconds of BA-NY response time in addition to 20 seconds of transport and processing time within MCI WorldCom’s own systems. Response times longer than that raise a substantial barrier to entry. Many customers will simply hang up the phone rather than wait an indeterminate period while their CSRs are being pulled. Id.

^{21/} The NYPSC recently established a performance standard of “ten seconds plus parity with retail CSR” for parsed CSRs. Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Cos., Case No. 97-C-0139, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in part Petition for Reconsideration, Clarification, and Stay, at 15 (NYPSC Nov. 5, 1999). In practice, this should require response times of approximately eleven seconds. Lichtenberg & Sivori Supp. Decl. ¶ 8 n.2.

Unfortunately, now that this critical function is up and running, MCI WorldCom is finding that BA-NY's response times for parsed CSRs become significantly longer as the volume of transactions increases. Response times of 10 to 15 seconds during the day (9:00 am to 5:00 pm) rise to 20 to 40 seconds in the evening (6:00 pm to 9:00 pm), when volumes increase. Id. ¶ 11. Unpredictable response times of this length are impossible to "script," and affect MCI WorldCom's sales. Such lengthy response times raise serious questions about the capacity of BA-NY's pre-ordering systems and databases to handle commercial volumes. They directly affect competition. Id.

The NYPSC's claim that BA-NY's pre-ordering response times for EDI are adequate does not address response time for parsed CSRs. The only evidence cited by the NYPSC is KPMG's finding that BA-NY's response times for unparsed CSRs during testing were satisfactory.^{22/} The KPMG testing focused almost exclusively on unparsed CSRs, and the little testing it did on parsed CSR showed the same kind of unacceptable response times that are now plaguing MCI WorldCom's local sales efforts. This is a problem that must be corrected promptly.

Pre-Order Outages. In addition to its slow response times, the pre-order interface continues to experience frequent outages. The interface was down eleven times from its

^{22/} NYPSC Eval. at 40. Even as to unparsed CSRs, KPMG found that response times increased along with the volumes of orders processed, which is exactly the problem MCI WorldCom is facing today with parsed CSRs. See KPMG Final Report, Table IV-5.13, P5-3, at IV-105 (finding that BA-NY failed to meet the required standard for pre-ordering response times for all pre-ordering transaction types) (BA-NY App. C, Tab 916).

production release on September 3 through October 19. Lichtenberg & Sivori Initial Decl. ¶ 61. Since that time, the interface has gone down almost daily -- 18 additional times. See Lichtenberg & Sivori Supp. Decl. ¶ 10 & Attachment 1. MCI WorldCom remains hopeful that these problems can be overcome, but every day the outages occur increases concerns about the commercial viability of the interface and BA-NY's ability to stabilize it.

Incomplete Availability of Parsed CSRs. MCI WorldCom recently learned that BA-NY's systems do not provide parsed CSRs for every order type, so MCI WorldCom promptly asked BA-NY to clarify the services for which it will provide parsed CSRs. Unfortunately, BA-NY has not adequately answered this question. Nor has BA-NY agreed to a schedule for developing and implementing parsed CSRs for ISDN service -- one order type MCI WorldCom knows will not generate a parsed CSR. Id. ¶ 12.

Lack of Pre-Order and Order Integration. Despite their best efforts, MCI WorldCom and other CLECs have been unable to fully implement an application-to-application interface for pre-ordering with BA-NY. MCI WorldCom Comments at 27-28. Apart from MCI WorldCom's troubling experience with the parsed CSR, CLEC access to pre-ordering OSS today remains largely limited to BA-NY's GUI. See, e.g., DOJ Eval. at 33-34 & n.91; AT&T Comments and appended Crafton & Connolly Aff. ¶¶ 25-26, 87-88 (unavailability of CORBA interface). For a variety of reasons, including poor documentation from BA-NY, delays in developing the necessary SSL3 connectivity, and the timing of BA-NY's roll out of new pre-ordering back office systems, address validation for new customers, telephone number selection, and due date availability will not be available before the first quarter of next year; and EDI for other

subfunctions (including, among others, service and feature information, directory listings, and xDSL loop qualification) will not be in production until later in 2000. Lichtenberg & Sivori Initial Decl. ¶¶ 83-96.^{23/} Thus, BA-NY's pre-order interface is incomplete as well as inadequate.^{24/}

In sum, as with its ordering and change management functions, BA-NY has made great strides toward making an integrated pre-order function available to CLECs, but it has not yet completed the job.

D. BA-NY Should Provide Advanced Services Loops.

DOJ, the NY AG, and the "data CLECs" that have the most experience with BA-NY's DSL offering agree with MCI WorldCom that BA-NY cannot adequately provide loops to its competitors to be used for DSL-based services in commercially significant quantities. This is an especially critical failure in light of the important role this technology is likely to play as telecommunication markets evolve, and in light of the FCC's ruling in the UNE remand

^{23/} One positive development is that MCI WorldCom is now able to use the address validation function for migrating customers. Lichtenberg & Sivori Supp. Decl. ¶ 13.

^{24/} The NYPSC fails to address the fact that EDI for pre-ordering is not available for CLECs as a practical matter, and relies instead on KPMG's ability to build and test a noncommercial version of EDI for pre-ordering during the third-party testing. NYPSC Eval. at 37-38. As MCI WorldCom explained in its initial comments, the NYPSC misconstrues the evidence. See MCI WorldCom Comments at 28; Lichtenberg & Sivori Initial Decl. ¶¶ 57-60. More to the point, although testing information is useful in the absence of real commercial experience, commercial experience remains the best evidence. LA II Order ¶ 56. It turns matters on their head to ignore commercial experience when it is available and rely on testing results instead.

proceeding.^{25/} In that proceeding, the Commission declined to require ILECs generally to make available DSL-equipped loops as part of the UNE platform. Without access to DSL-equipped loops, CLECs will have to obtain stand-alone DSL-capable loops and attach them to their own DSL equipment collocated at ILEC end offices. Accordingly, if BA-NY cannot effectively deliver stand-alone DSL-capable loops in commercially significant quantities, it will retain a monopoly over this technology, and an insurmountable advantage in offering bundled products that telecommunications customers want.

CLECs need nondiscriminatory access to all loop makeup information on a real-time, mechanized, basis. Many commenters agreed with MCI WorldCom that the pre-ordering processes introduced by BA-NY do not provide this necessary functionality, and so make it impossible for CLECs to inform their customers promptly and reliably of the availability of DSL-based services. Instead, BA-NY continues to offer CLECs only the pre-order information its own customer service representatives use to sell BA-NY's limited ADSL offering. To offer different DSL-based services, CLECs need access to relevant information on all loops, regardless of length.

It is significant that the data CLECs that have the most experience with BA-NY's existing processes uniformly find them unacceptable. For example, Rhythms NetConnections Inc. ("Rhythms") states that:

^{25/} In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No., Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999).

BA-NY has failed to provide . . . loop make up data to allow for provisioning DSL services in an efficient, nondiscriminatory, reasonable, and expeditious manner that would permit scalable entry of data competitors into the New York market.

Rhythms Comments at ii. Rhythms considers BA-NY's refusal to provide CLECs with real-time electronic access to its loop makeup databases "the single most immutable obstacle to scaleable entry by competitors providing advanced services in New York." Id. at 7. Rhythms points out that the Pennsylvania Commission recently criticized Bell Atlantic for failing to provide competitors with real-time electronic access to crucial loop makeup information, concluding that Bell Atlantic's mechanized loop information database (which is identical to the database proposed in New York) "is insufficient because this database was developed to support the specific needs of BA-PA's more limited ADSL retail offering and does not include crucial loop information needed for other xDSL services." Id. at 16 (internal quote and citation omitted).

NorthPoint Communications, Inc. ("NorthPoint") also addresses Bell Atlantic's "limited and unreliable" mechanized loop qualification database. According to NorthPoint, because BA-NY's mechanized loop qualification database does not contain the critical information that CLECs need to provide DSL-based services to their customers, CLECs are forced to employ BA-NY's "expensive and time-consuming" manual loop qualification procedures. NorthPoint Comments at 6-7. Other CLECs also express serious concerns about the way BA-NY currently makes loop make-up information available to competitors. Sprint Comments at 8-14; CoreComm Comments at 7-8; Network Access Solutions Comments at 8-10.

Based on the evidence submitted by these and other commenters, DOJ correctly determined that "on the current record" it could not conclude "that Bell Atlantic is currently

providing adequate access to preordering information needed to provide DSL services.” DOJ Eval. at 26.^{26/}

In short, virtually all commenters, including the NYPSC, the NY AG, and DOJ, acknowledge the existence and importance of these DSL problems. These problems, however, are not unsolvable. Indeed, the NYPSC has convened a collaborative session with all of the interested parties to identify solutions. As the NYPSC explains, “[b]efore the collaborative are the central issues raised by xDSL providers in this proceeding, [including] loop qualification for ordering, [and] loop provisioning.” NYPSC Eval. at 93. The collaborative expects to recommend solutions to the NYPSC in December or shortly thereafter, and the NYPSC is “optimistic that the attention focused on xDSL provisioning will resolve many of the outstanding issues.” *Id.* at 94. At the same time, the NYPSC is conducting a hearing to review BA-NY’s non-cost-based DSL loop conditioning rates. It expects to adopt permanent TELRIC-based rates by the end of the year. *Id.* at 79-80.

Most commenters -- including in particular DOJ, the NY AG, and all of the data CLECs

^{26/} As many commenters have emphasized, the kinds of problems MCI WorldCom has had in ordering stand-alone loops, *see* Joint Declaration of John G. Donoghue and Ronald J. McMurtrie, appended at Tab E to MCI WorldCom’s initial comments, at ¶¶ 18-20, are making it extremely difficult for CLECs to order loops to provide DSL-based services. *See, e.g.*, NYPSC Eval. at 92 (noting that many CLECs “expressed extreme frustration with xDSL loop provisioning by Bell Atlantic-NY”); DOJ Eval. at 26 (“There are also serious unresolved issues relating to DSL ordering and provisioning processes.”); AT&T Comments at 30 & n.5; Network Access Solutions Comments at 7-9; Covad Comments at 16; NorthPoint Comments at 2, 13-17; CoreComm Comments at 6-7.

-- agree with MCI WorldCom that until the DSL-pricing docket is completed and the issues before the DSL collaborative group are resolved, BA-NY will not have established that it currently has the practical ability to "provide" DSL-capable loops on a commercial scale. See, e.g., DSL.net Comments at 5-6; @link Networks Comments at 2-3; Covad Comments at 14-15, NY AG Comments at 16.^{27/} As DOJ correctly concluded, "because Bell Atlantic filed this application before the results of those [collaborative] efforts can be seen, we cannot conclude that CLECs currently have access to DSL loops necessary for them to compete effectively. DOJ Eval. at 28.

E. BA-NY's Performance Remedies Are Not Adequate.

Finally, the Performance Assurance Plan ("PAP") and the Change Control Assurance Plan ("CCAP") constitute an important first effort in fashioning a workable performance remedy regime.^{28/} But commenters share MCI WorldCom's view that the remedies in the PAP and the CCAP are inadequate to prevent backsliding by BA-NY. A fortiori, as DOJ stresses in its Evaluation, these plans also are inadequate to spur BA-NY to correct the extant deficiencies in its section 271 application. Among other failings, the plans impose insufficient remedies, are

^{27/} In its evaluation, the NYPSC described the CLECs' DSL-related problems and the collaborative process it hopes will resolve them, but declined to draw any affirmative legal conclusion specifically about BA-NY's provision of DSL-capable loops. See NYPSC Eval. at 92-95.

^{28/} In a recent decision, the NYPSC approved without substantial change the PAP and CCAP, as amended by BA-NY on September 24, 1999. See Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Cos., Case No. 97-C-0139, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in part Petition for Reconsideration, Clarification, and Stay (NYPSC Nov. 5, 1999).

subject to numerous caps, include waiver procedures that limit their effectiveness, and institutionalize excessive forgiveness of BA-NY discrimination.^{29/} The plans should be significantly strengthened if local competition in New York State is to be preserved and expanded.

Insufficient Remedy Amounts. No enforcement scheme will achieve its goals unless the cost of non-compliance is higher than the cost of compliance.^{30/} DOJ is particularly concerned that BA-NY did not perform any analysis to determine whether the proposed remedy levels would be effective.^{31/} Many commenters agree with the conclusion of the economic analysis provided by MCI WorldCom that the remedy amounts in the PAP and the CCAP are inadequate.^{32/} They also agree with MCI WorldCom that the caps that BA-NY included in the

^{29/} By highlighting these particular remedy plan deficiencies in its reply comments, MCI WorldCom does not intend to minimize other deficiencies discussed in its initial comments at 37-44.

^{30/} See Declaration of George S. Ford & John D. Jackson appended at Tab C to MCI WorldCom's opening comments ("Ford & Jackson Decl.") ¶ 6.

^{31/} See DOJ Eval. at 40.

^{32/} See, e.g., NY AG Comments at 30-32; AT&T Comments at 89 ("The [Common Carrier] Bureau's conclusion that Southwestern Bell's proposed \$120 million maximum annual cap was 'too low' thus also demonstrates that the \$184 million annual cap proposed in the amended PAP for New York is also insufficient."); Competition Policy Institute Comments at 23 ("The current cap of \$269 million does not present . . . a deterrent, considering that Bell Atlantic generates over \$4.9 billion in gross revenue and \$495 million in net revenue from its intrastate business each year." (footnote omitted)); DSL.net Comments at 8 (same); e.spire/Net2000 Comments at 23 (arguing that no limits on remedy payments are appropriate); Intermedia Communications Inc. Comments at 15 (same).

PAP and CCAP reduce the real remedy amounts far below the \$269 million touted by BA-NY.^{33/}

That the NYPSC has the authority to reallocate remedy amounts among the service-delivery-method caps (but not among the monthly caps) is of limited use to CLECs, because any reallocation would only be effective for months after the reallocation.^{34/} An effective performance remedy scheme for BA-NY would include a real overall remedy level above \$700 million in annual payments. See Ford & Jackson Decl. ¶ 85.

The Plans Are Insufficiently Self-Executing. Furthermore, commenters concur that enforcement of these plans requires too much regulatory involvement. As discussed, the plans rely on regulatory reallocation of remedy amounts. They also permit BA-NY to seek regulatory exemptions from the consequences of poor performance provided to CLECs.^{35/} Because the plans will likely require significant regulatory intervention in these and other respects, they cannot be considered to be truly self-executing.

33/ See MCI WorldCom Comments at 41; see, e.g., DOJ Eval. at 40; AT&T Comments at 89 (“Having determined an annual ‘maximum amount at risk,’ Bell Atlantic proceeds to slice and dice that amount into so many smaller discrete sub-caps that the likely actual monthly payment or credit obligations become completely trivial in light of the New York markets that are at stake.”); CoreComm Comments at 11-12; Sprint Comments at 25-26.

34/ See NY AG Comments at 31-32.

35/ See, e.g., DOJ Eval. at 39 & n.105 (discussing the several provisions in the PAP and CCAP for BA-NY to seek waivers of performance remedy payments; “No procedures or time requirements for considering these waiver requests are proposed in the amended plans, and the manner in which these standards will be interpreted is unclear at this time. This creates the potential for litigation and delay in imposing penalties and uncertainty that inadequate performance will in fact be punished.”).

Excessive Forgiveness. Other commenters share MCI WorldCom's view that BA-NY's remedy plans incorporate numerous and overlapping provisions that in essence "forgive" BA-NY's provision of unquestionably discriminatory service to CLECs.^{36/}

For example, suppose that BA-NY provides clearly discriminatory service in one month on three measures monitored under the UNE Mode of Entry ("MOE") provision of the PAP, receiving a "Z" score of less than or equal to -1.645. Under the MOE provision, these Z scores are converted to performance scores of -2.^{37/} On all other measures, BA-NY provides adequate service (that is, BA-NY received a Z score of greater than -0.8225 and a corresponding performance score of 0). Suppose that the three metrics that BA-NY fails are:

- (1) OR 1-02, "% On Time LSRC - Flow Through - POTS," which receives a weight of 20 under the MOE scoring plan;^{38/}
- (2) PR 4-02, "Average Delay Days - Total - POTS," which receives a weighted score of 10;^{39/} and
- (3) MR 3-01, "% Missed Repair Appointments - Loop," which receives a weighted score of 20.^{40/}

^{36/} See MCI WorldCom Comments at 42-44; AT&T Comments at 92.

^{37/} See BA-NY Joint Declaration of George Dowell and Julie Canny Decl., att. C, exh. 1, app. E, p. 1, ¶ 2 ("Mode of Entry Bill Credit Mechanism"). Note that no matter how clear or egregious BA-NY's discrimination (and thus no matter how low a Z score it receives), BA-NY's raw Z score is converted to a -2 under the scoring system.

^{38/} See BA-NY, Dowell/Canny Decl., att. C, exh. 1, app. A, p. 4, table A-1-2.

^{39/} See *id.*

^{40/} See BA-NY, Dowell/Canny Decl., att. C, exh. 1, app. A, p. 5, table A-1-2.

Under the MOE scoring system, BA-NY's performance would receive a total score of -100.^{41/} The PAP then divides this -100 score by the total of the potential weights for the UNE MOE, which is 609, to come up with a monthly "X" score of -0.1642. But because this X score is more than the "Minimum X" threshold of -0.1904 under the UNE MOE provision, BA-NY would not be required to provide any billing credits whatsoever to CLECs.^{42/} This is so, even though BA-NY's provision of service to CLECs for those three measures was almost certainly discriminatory, possibly egregiously discriminatory. (Note that the calculation of the underlying "Z" score already takes into account the possibility that the Z score does not in fact reflect actual discrimination.) Moreover, BA-NY would not owe any remedy credits to CLECs under other provisions of the PAP, including the "Critical Measures" and the "Domain Clustering" provisions.

BA-NY's performance failures on the three performance metrics considered in the example could disrupt CLEC operations significantly. By failing to confirm flow-through orders in a timely fashion (submetric OR 1-02), BA-NY could leave CLECs not knowing whether their orders have been received or are in the queue for completion. By failing to complete work by the promised completion date (submetric PR 4-02), BA-NY could stymie new CLEC connections. Similarly, by missing repair appointments (submetric MR 3-01), BA-NY could significantly hurt its competitors' reputations among consumers.

^{41/} That is, $(-2 \times 20) + (-2 \times 10) + (-2 \times 20) = -100$.

^{42/} See BA-NY, Dowell/Canny Decl., att. C, exh. 1, app. A, p. 10, table A-3-2; BA-NY, Dowell/Canny Decl., att. C, exh. 1, app. E, p. 2, ¶ 5.

This example is -- unfortunately -- representative. Many other combinations of discriminatory performance could likewise result in no remedy credits. Performance failures on the performance areas (such as access) and metrics (such as emergency maintenance change management notices) not covered by the plans would not generate performance remedies either. In this and many other ways, the BA-NY performance remedy plans provide an inadequate deterrent against discriminatory service by BA-NY.

Strengthening the Plans. Fixing the problems with the BA-NY plans requires both increasing or eliminating the annual cap on remedy amounts and adopting a per-measure, tiered remedy plan that would provide remedies to affected CLECs individually, as well as aggregate remedies. MCI WorldCom and AT&T jointly submitted just such a plan to the FCC in June of this year,^{43/} and other parties indicate their support for similar plans.^{44/} Adoption of a plan with these features would solve many of the problems associated with BA-NY's plans. It would increase the overall remedy amount to a minimally effective level, limit opportunities for BA-NY to disrupt remedy credits through regulatory challenges, and eliminate aggregation of performance measures which results in excessive forgiveness of clearly discriminatory actions. The Commission should adopt the view of most commenters to address this issue and insist that BA-NY develop a strengthened remedy plan.

^{43/} See Ford & Jackson Decl. att. 3 (reprinting AT&T/MCI WorldCom Joint Remedies Proposal).

^{44/} See, e.g., e.spire/Net2000 Comments at 24.

CONCLUSION

In sum, BA-NY has taken important steps towards opening local markets in New York, but the FCC can grant this application only after BA-NY successfully resolves the issues raised in these comments. MCI WorldCom looks forward to continued progress on the remaining issues so that New York's consumers finally may enjoy the full benefits of sustainable competitive local telephone service.

Respectfully submitted,

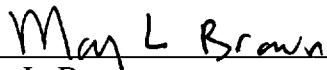
Mark D. Schneider
Nory Miller
Paul W. Cobb, Jr.
Jon M. Shepard
Elena N. Broder-Feldman
Jeffrey I. Ryen
JENNER & BLOCK
601 13th Street, N.W., Suite 1200
Washington, D.C. 20005


(202) 639-6000

Anthony C. Epstein
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

(202) 429-8065

November 8, 1999



Mary L. Brown 
Keith L. Seat
Karen T. Reidy
MCI WORLDCOM, INC.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

(202) 887-2993

CERTIFICATE OF SERVICE

I, Mark D. Schneider, hereby certify that I have this 8th day of November, 1999, caused a true copy of Reply Comments of MCI WORLDCOM, Inc. to be served on the parties listed below via first class mail postage pre-paid unless otherwise indicated :

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 12th St., S.W.
Washington, D.C. 20554
(Via Hand Delivery)

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554
(Via Hand Delivery)

ITS, Inc.
The Portals
445 12th St., S.W.
Washington, D.C. 20554
(Via Hand Delivery)

James R. Young
Executive Vice President and
General Counsel
Bell Atlantic Corporation
1095 Avenue of the Americas
New York, NY 10036

Henk Brands
Mark L. Evans
Kellogg, Huber, Hansen, Todd & Evans,
P.L.L.C.
1301 K St., N.W., Suite 1000 West
Washington, D.C. 20005
Counsel for Bell Atlantic Corporation
(Via Hand Delivery)

Mary Ellen Burns
NYS Department of Law
120 Broadway
New York, NY 11207
(Via Federal Express)

James G. Pachulski
TechNet Law Group, P.C.
2121 K St., N.W., Suite 800
Washington, D.C. 20037
Counsel for Bell Atlantic Corporation

Randal S. Milch
Associate General Counsel
New York Telephone Company
d/b/a Bell Atlantic-New York
1095 Avenue of the Americas
New York, NY 10036

Michael E. Glover
Associate General Counsel
Bell Atlantic Corporation
1320 N. Court House Road, Eighth Floor
Arlington, VA 22201

Maureen O. Helmer, Chairman
Lawrence G. Malone
Penny Rubin
Peter McGowan
Andrew Klein
Eleanor Stein
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
(Via Federal Express & Email)

Maureen O. Helmer, Chairman
Lawrence G. Malone
Penny Rubin
Peter McGowan
Andrew Klein
Eleanor Stein
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
(Via Federal Express & Email)

Lawrence G. Malone
General Counsel
New York Public Service Commission
Three Empire State Plaza
Albany NY 12223-1350

Donald J. Russell
Department of Justice
Telecommunications Task Force
Antitrust Division, suite 8000
1401 H Street, N.W.
Washington, D.C. 20530
(Via Hand Delivery)

Martin A Corry
Directory, Federal Affairs
AARP
601 E Street, N.W.
Washington, D.C. 20049

Maureen A. Lewis
General Counsel
Alliance for Public Technology
919 18th Street, N.W., Tenth Floor
Washington, D.C. 20006

Rebekah J. Kennett
Kelley Drye & Warren LLP
1200 19th St., N.W., Suite 500
Washington, D.C. 20036
Counsel for Cable & Wireless USA, Inc.

Rachel J. Rothstein
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

John S. Logan
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for CloseCall America, Inc.

Carol Ann Bischoff
Executive Vice President
and General Counsel
Competitive Telecommunications Assn.
1900 M St., N.W., Suite 800
Washington, D.C. 20036

Jason D. Oxman
Covad Communications
600 14th St., N.W., Suite 750
Washington, D.C. 20005

Susan Jim Davis
Covad Communications
600 14th St., N.W., Suite 750
Washington, D.C. 20005

Valarie M. Furman
Dickstein Shapiro Morin
& Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
Counsel for ICG Telecom Group, Inc.

Barabara Keefe
MainPOINT Project Director
University of Maine System
Network, GBSD
P.O. Box 799
Portland, ME 04104

Cleo Manual
Executive Director
Keep America Connected
P.O. Box 27911
Washington, D.C. 20005

Todd McCracken
President
National Small Business United
1156 15th St., N.W., Suite 1100
Washington, D.C. 20005-1711

Daniel W. Merenda
President & CEO
Partners in Education
901 North Pitt Street, Suite 320
Alexandria, VA 22314-1536

Randall B. Lowe
Chief Legal Officer
Prism Communication Services, Inc.
1667 K St., N.W., Suite 200
Washington, D.C. 20006

Virginia M. Santo
99 Perry Street
Hampstead, New York 11550

A. Renee Callahan
Willkie Farr & Gallagher
Three Lafayette Center
1155 22nd Street, N.W., Suite 600
Washington, D.C. 20036
Counsel for Sprint

Charles C. Hunter
Hunter Communications Las Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006
Counsel for Telecommunications Resellers
Association

Anne Werner
President & CEO
United Seniors Health Cooperative
409 Third Street, S.W., Suite 200
Washington, D.C. 20024-3204

Russell M. Blau
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Counsel for KMC Telecom, Inc.

Antony Richard Petrilla
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Counsel for RCN Telecom Services, Inc.

Michael D. Hess, Esq.
Office of the Corporation Counsel of
The City of New York
100 Church Street
New York, NY 10007

Rodney L. Joyce
Shook, Hardy & Bacon L.L.P.
Hamilton Square, Suite 800
600 14th Street, N.W.
Washington, D.C. 20005-2004

Linda F. Goldoner
National Consumers League
1701 K Street, N.W., Suite 1200
Washington, D.C. 20006

Larry A. Blosser
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Counsel for @ Link Networks, Inc.

Prince Jenkins
Senior Policy Counsel
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619

James L. Dolan
President and CEO
Cablevision Systems Corporation
111 New South Road
Hicksville, NY 11801

Janet S. Livengood, Esq.
Director of Legal and Regulatory Affairs
Hyperion Telecommunications, Inc. d/b/a
Adelphia Business Solutions
500 Thomas St., Suite 400
Bridgeville, PA 15017-2838

Jonathan D. Draluck
Swidler Berlin Shereff Friedman, LLP
3000 K St., N.W., Suite 300
Washington, D.C. 20007-5116
Counsel for Adelphia Business Solutions

Michael E. Olsen
NorthPoint Communications, Inc.
303 Second Street, South Tower
San Francisco, CA 94108

Lori Anne Dolqueist
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20009
Counsel for NorthPoint
Communications, Inc.

Douglas G. Bonner
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
Counsel for Omnipoint
Communications, Inc.

A. Michael Schwarzwald
V.P. Regional General Counsel
NEXTLINK New York, Inc.
1730 Rhode Island Ave., N.W.
Suite 1000
Washington, D.C. 20036

Mark C. Rosenblum
AT&T Corporation
295 North Maple Ave.
Basking Ridge, NJ 07920

Harry M. Davidow
Chief Regulatory Counsel - New York
AT&T Corporation
32 Avenue of the Americas, Room 2700
New York, NY 10013

Mark E. Haddad
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006
Counsel for AT&T Corporation

Claude L. Stout
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910-3803

Bill Schmid
Chairman, Consortium for School Networking
1555 Connecticut Ave., N.W.
Suite 200
Washington, D.C. 20036-1126

David S. Turetsky
Teligent, Inc.
8065 Leesburg Pike, Suite 400
Vienna, VA 22182

Dale Lestina
Organizations Concerned About Rural
Education
1201 16th St., N.W., Suite 510
Washington, D.C. 20036

Daphne Kwok
Organization of Chinese Americans, Inc.
1001 Connecticut Ave., N.W.
Suite 601
Washington, D.C. 20036

Kim Robert Scovill, Esq.
Vice President, Legal and Regulatory Affairs
Choice One Communications, Inc.
100 Chestnut Street, Suite 700
Rochester, NY 14534

Robert W. McCausland
Vice President, Regulatory and
Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118

Jonathan E. Canis
Kelley Drye & Warren LLP
1200 19th St., N.W.
Fifth Floor
Washington, D.C. 20036
Counsel for Association For Local
Telecommunication Services

Richard Metzger, Jr.
Lawler, Metzger & Milkman, LLC
1909 K Street, N.W., Suite 820
Washington, D.C. 20006
Counsel for Z-Tel Communications, Inc.

Michael B. Hazzard
Lawler, Metzger & Milkman, LLC
1909 K Street, N.W., Suite 820
Washington, D.C. 20006
Counsel for Allegiance Telecom, Inc.

Ronald J. Binz
Competition Policy Institute
1156 15th St., N.W., Suite 520
Washington, D.C. 20005

Christopher A. Holt
Assistant General Counsel
Regulatory and Corporate Affairs
CoreComm Limited
110 East 59th St., 26th Floor
New York, NY 10022

James L. Casserly
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Ave., N.W., Suite 900
Washington, D.C. 20004

Jeffrey Blumenfeld
Chief Legal Office & General Counsel
Rhythms NetConnections Inc.
6933 So. Revere Parkway
Englewood, CO 80112

Christy C. Kunin
Blumenfeld & Cohen
1625 Massachusetts Avenue, N.W.
Suite 300
Washington, D.C. 20036
Counsel for Rhythms NetConnections Inc.

Eugene F. Sullivan III
Two Eagle Square, Suite 400
Concord, NH 03301
Counsel for Destek Networking Group, Inc.

Andrew D. Lipman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Counsel for DSL.net, Inc.

Wendy Bluemling
Director of Regulatory Affairs
DSL.net, Inc.
545 Long Wharf Drive, Fifth Floor
New Haven, CT 06511

Riley M. Murphy
Executive Vice President and General Counsel
e.spire Communications, Inc.
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

Jason R. Karp
Net2000 Communications Services, Inc.
8180 Greensboro Drive, Suite 500
McLean, VA 22102

Brad E. Mutschleknaus
Kelley Drye & Warren LLP
1200 19th St., N.W., Suite 500
Washington, D.C. 20036
Counsel for e.spire/Net2000

James M. Smith
Vice President of Law and Public Policy
Excel Communications, Inc.
1133 Connecticut Ave., N.W.
Suite 750
Washington, D.C. 20036
Counsel for Excel Communications, Inc.

Christopher W. Savage
Cole, Rawid & Braverman, L.L.C.
1919 Pennsylvania Ave., N.W., Suite 200
Washington, D.C. 20006
Counsel for Global NAB, Inc.

William J. Rooney, Jr.
Vice President & General Counsel
Global NAPs, Inc.
10 Merrymount Road
Quincy, MA 02169

Jonathan Askin
Vice President - Law
The Association for Local
Telecommunications Services
888 17th St., N.W., Suite 900
Washington, D.C. 20006

Michael J. Ettner
Personal Property Division
General Services Administration
1800 F St., N.W., Room 4002
Washington, D.C. 20405

Snavelly King Majoros O' Connor
& Lee, Inc.
1220 L St., N.W., Suite 410
Washington, D.C. 20005

Robert A. Curtis
Senior Vice President, Strategic Planning
Z-Tel Communications Services, Inc.
601 South Harbour Island Blvd.
Tampa, FL 33602

Kristine DeBry
Swidler Berlin Shereff Friedman, LLP
3000 K St., N.W., Suite 300
Washington, D.C. 20007
Counsel for the Coalition to Ensure
Responsible Billing

Brent Wilkes
National Executive Director
League of United Latin American Citizens
1133 20th St., N.W., Suite 750
Washington, D.C. 20036

Robin L. Redfield
Swidler Berlin Shereff Friedman, LLP
3000 K St., N.W.
Washington, D.C. 20007
Counsel for Focal Communications Corp.
of New York

Harry C. Alford
President & CEO
National Black Chamber of Commerce
1350 Connecticut Ave., N.W., Suite 825
Washington, D.C. 20036

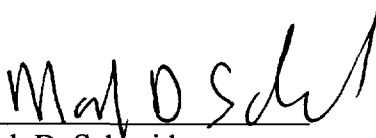
Glenn S. Richards
David S. Konczal
Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
Counsel for National ALEC Association

Tom Mazerski
President
CloseCall America, Inc.
100 Helfenbein Lane, Suite 230D
Chester, MD 21619

Robert Aamoth
Kelley Drye & Warren, LLP
1200 19th Street, NW Suite 500
Washington, DC 20036
Counsel for Competitive Telecommunications
Ass'n

Andrew D. Lipman, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K. Street, NW, Suite 300
Washington, DC 20007-5116
Counsel for DSL.net, Inc.

Harvey L. Reiter
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Counsel for New England Conference of
Public Utilities Commissioners



Mark D. Schneider